Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

October Term, 1976

No. 76-1419

ELIJAH W. RATCLIFF,
Petitioner

vs.

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS,
Respondent

MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF MANDAMUS AND PETITION FOR WRIT OF MANDAMUS

ELIJAH W. RATCLIFF,
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Petitioner, Pro Se

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1976

No.

ELIJAH W. RATCLIFF,

Petitioner

vs.

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS,

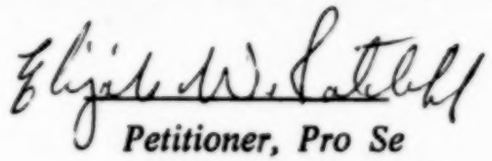
Respondent

MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF MANDAMUS

To the Honorable Warren E. Burger, Chief Justice, and the Justices of the Supreme Court of the United States:

Petitioner, Elijah W. Ratcliff, moves the Honorable Warren E. Burger, Chief Justice, and the Justices of the Supreme Court of the United States for leave to file the attached Petition for Writ of Mandamus and for an order directing the United States District Court for the Southern District of Texas, Houston Division, wherein the Honorable James Noel is Presiding Judge in CA No. 75-H-1945, hereinafter called Respondent, to issue the writ of habeas corpus subjiciendum or other proper order in accordance

with the legal relief sought through the described and attached Petition for Writ of Mandamus, and for the additional relief justice may require to terminate the subject wrongful detention and restraint upon Petitioner's liberty.



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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1976
No.

ELIJAH W. RATCLIFF,
Petitioner

vs.

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS,
Respondent

PETITION FOR WRIT OF MANDAMUS

To the Honorable Warren E. Burger, Chief Justice, and the Justices of the Supreme Court of the United States:

Petitioner, Elijah W. Ratcliff, hereby applies for a writ of mandamus against Respondent, the United States District Court for the Southern District of Texas, Houston Division, and in support of the petition states:

ORDERS AND OPINIONS BELOW

The proceedings in the State Court of last resort related to this petition are reported as *Ratcliff v. Texas,* 504 S.W.2d 883 (1974). This is the third original application for a writ of mandamus before this Court involving the issues presented to it under docket numbers 74-5595 and 75-208, through motions for leave to file petitions for extraordinary writs, denied in each instance. The action before Respondent was docketed on the 7th day of November, A.D., 1975, but Respondent has failed to issue the writ or enter an order moving the case towards proper disposition pursuant to its jurisdiction. Orders and opinions of the related proceedings in the District Court of Montgomery County, Texas, No. 11,064, and the Court of Criminal Appeals of Texas, No. 47,600, are attached hereto.

JURISDICTION

Basic jurisdiction in this petition is by virtue of *Title 28, United States Code,* Sections 1651 and 1257 (2) and (3). Authority for the relief sought derives further from the inaction of Respondent relevant to authority vested by *Title 28, United States Code,* Sections 1652 and 2241 through 2255; *Title 42, United States Code,* Sections 1981 through 1984; and *United States Code, Const. Amends.* V, VIII, XIII, XIV and XV.

QUESTIONS PRESENTED

I. The constitutional requirements of due process forbid judicial and magisterial acquiescence in the fraudulent conviction and detention of a citizen through arbitrary refusal to execute duties essential to fundamental fairness.

II. A United States District Court may not arbitrarily, unreasonably and capriciously discriminate against a petitioner because of his race or to facilitate the clouding of irregularities committed by the local Judiciary and Bar.

III. The unnecessary and unreasonable delay by Respondent in acting upon Petitioner's Application for Writ of Habeas Corpus merits issuance by this Court of the Writ of Mandamus ultimately commanding Respondent to enter an order in accordance with applicable law and releasing Petitioner from his wrongful detention and restraint.

STATEMENT OF CASE

This petition is a product of the issues presented before this Court in *Ratcliff v. Texas, et al.*, No. 74-5595 and No. 75-208. Petitioner was subjected to denial of due process through consecutive restraints by State of Texas officials preventing a timely review of his appeal from the Court of Criminal Appeals of Texas, No. 47,-600. Following memorandum opinions by the Supreme Court of the United States denying the described motions, without prejudice, Petitioner returned to the United States District Court where his removal action arising out of the same charge was previously docketed as Cr. No. 71-H-228, seeking habeas corpus relief.

The Application for Writ of Habeas Corpus names William J. Estelle, Jr., Director of the Texas Department of Corrections, as respondent. It was docketed on the 7th day of November, A.D., 1975, in the United States District Court for the Southern District of Texas, Houston Division, as CA No. 75-H-1945 (US DC Tr. pp. —— - ——). However, no writ or other order advancing a proper disposition of the proceeding has been entered by Respondent in spite of Petitioner's diligent prosecution of the habeas corpus issue (US DC Tr. pp. —— - ——).

The dilatory tactics have effectively extended the denial of Petitioner's right to equal protection under the laws as he is being wrongfully detained for asserting rights firmly established to protect his property interests in bank account funds designated for writing conventional

checks under Texas and general American precedents. *Tarkington v. Brunett,* 51 S.W. 274 (1899); *Anderson v. O'Bryant,* 33 S.W.2d 842 (1928); *Hesbrook v. State,* 194 S.W.2d 260 (1946); *Hesbrook v. State,* 194 S.W.2d 263 (1946); *Beard v. State,* 287 S.W.2d 667 (1956); *Bouie v. City of Columbia,* 378 U.S. 347 (1964); *Vernon's Tex. Const.,* Art. 1, Section 19; *United States Code, Const. Amend.* XIV.

The subject prosecutor and complainant from the trial Court along with the applicable State judiciary became antagonized by Petitioner's refusal to pay for a defective 1966 Chevrolet pick-up truck during 1970 and designedly but fraudulently reversed all pertinent criminal precedents on the issue to establish a conviction of Petitioner contrary to the letter and spirit of the Fourteenth Amendment to the Federal Constitution (Ct. Cr. Ap. Tr. and SF, No. 47,600). *Hesbrook v. State,* 194 S.W.2d 260 (1946); *Beard v. State,* 287 S.W.2d 667 (1956); *Eason v. State,* 320 S.W. 2d 11 (1959).

The legislation utilized by the State of Texas in its prosecution is *Vernon's Ann. P. C.*, Arts. 1410 and 1413, which provide:

> Article 1410: "Theft is the fraudulent taking of corporeal personal property belonging to another from his possession, or from the possession of some person holding the same for him, without his consent, with intent to deprive the owner of the value of the same, and to appropriate it to the use or benefit of the person taking."
>
> Article 1413: "The taking must be wrongful, so that if the property came into the possession of the person accused of theft by lawful means, the subsequent appropriation of it is not theft, but if the taking, though originally lawful, was obtained by any false pretext, or with any intent to deprive the owner of the value thereof, and appropriate the property to the use and benefit of the person taking, and the same is so appropriated, the offense of theft is complete."

As reflected by the record and Petitioner's allegations, emphasis has been placed on the unconstitutionality of applying the above legislation to Petitioner's conduct to secure a conviction (Motion for New Trial, paragraphs XV and XVI, Ct. Cr. Ap. No. 47,600, Tr., p. 160); and secondarily he has noted the racial discrimination which characterized the Polk County, Texas Grand Jury that returned the subject indictment, No. 9432, District Court of Polk County, Texas (Ct. Cr. Ap., No. 47,600, Tr. pp. 52-57, and paragraphs XV and XVI, p. 160; also, Ct. Cr. Ap., No. 4624, Tr., paragraphs V, VI, VII and VIII, pp. 3-4).

REASONS FOR GRANTING THE PETITION

More than sixteen (16) months have elapsed since the subject habeas corpus action was presented to Respondent without issuance of the writ of habeas corpus or other orders contemplated by law even though all statutory filing fees and other prerequisites have been satisfied by Petitioner. *Title 28, United States Code,* Sections 2241 through 2255; *Title 42, United States Code,* Sections 1981, 1982, 1983 and 1984; *United States Code, Const. Amends.* V, VIII, XIV and XV.

Title 28, United States Code, Section 2243, by its language contemplates that a meritorious application for habeas corpus relief shall be entertained and acted upon in good faith within a matter of days as opposed to even weeks, and Petitioner submits that delay efforts effectiyely encompassing a period in excess of sixteen (16) months are not justifiable under the facts.

The unconstitutionality of the State's application of *Vernon's Ann. P. C.,* Arts. 1410 and 1413 (now repealed effective January 1, 1974), could hardly be more vividly exemplified than under the present facts. Decisions of the Court of Criminal Appeals of Texas with respect to white citizens have been called to the attention of Respondent encumbering a period from 1899 through the date of the appellate Court opinion in this litigation expressly sustaining the principles maintained in the litigation by Petitioner as indispensable to the offense of theft by false pretext. Such principles summarized hold

that due process requires that a criminal statute give fair warning of the conduct it prohibits, and the highest court of a State cannot circumvent the legislature and the *ex post facto* preclusion and achieve such a result by judicial construction. *Hesbrook v. State,* 194 S.W.2d 260 (1946); *Hesbrook v. State,* 194 S.W.2d 263 (1946); *Beard v. State,* 287 S.W.2d 667 (1956); *Eason v. State,* 320 S.W.2d 11 (1959); *Garcia v. State,* 501 S.W.2d 652 (1973); *Vernon's Ann. C.C.P.,* 5.01; *V.T.C.A., Bus. & C.,* Arts. 3.409, 3.417, 4.303 and 4.403; *Bouie v. City of Columbia,* 378 U.S. 347 (1964). Such cases establish that the State must prove a false pretext induced the surrender of the relevant property to the accused while the State has not approached proof of any false pretext by Petitioner. *United States Code, Const.* Art. 1, Section 9, Cls. 2 and 3; *United States Code, Const. Amend.* XIV.

CONCLUSION

For the foregoing reasons, and additional reasons appearing more elaborately of record, this Court is requested to determine the merits of this mandamus action and issue, or order Respondent to show cause why it should not be issued, the writ of mandamus directing Respondent, the United States District Court for the Southern District of Texas, Houston Division, to forthwith execute the writ of habeas corpus subjiciendum or other proper order as requested by the application before it entitled and numbered Elijah W. Ratcliff, Petitioner, vs. William J. Estelle, Jr., Respondent, CA No. 75-H-1945.

Brown v. Allen, 344 U.S. 443 (1953); *United States ex rel. Kemp v. Pate*, 359 F.2d 749 (1966); *Picard v. Connor*, 404 U.S. 270 (1971), at page 277; *Pryor v. Beto*, 460 F.2d 307 (1972).

April 12, 1977

Date

Elijah W. Ratcliff

Petitioner, Pro Se

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APPENDIX A

CONVICTION AND COMMITMENT ORDERS, JUDGMENTS AND OPINION

(Filed Feb 25 1974
R. J. Gray
District Clerk, Montgomery County, Texas
By Peggy Stevens *Deputy*)

Elijah W. Ratcliff, Appellant

No. 47,600

v.

The State of Texas, Appellee

Appeal from Montgomery County

OPINION

Appellant was indicted for the offense of felony theft as defined in Art. 1410, V.A.P.C., and the jury found him guilty and fixed his punishment at confinement for six years. The trial was held in Montgomery County after the Court ordered a change of venue from Polk County on its own motion following appellant's application for a change of venue.

On April 6, 1970, appellant appeared at an automobile dealer's place of business in Livingston and there negotiated with one of the partners for the purchase of a 1966 Chevrolet pickup truck. The parties agreed upon a price of $895 plus taxes and transfer charges, the total price being $923.60. Appellant then wrote a check for the full amount of the price of the vehicle payable to the dealer, and received the certificate of title and license receipts for the truck. He then drove away in the truck.

However, before completing the transaction, the dealer had his bookkeeper telephone the bank upon which the check was drawn, Chase Manhattan Bank in New York City, to determine if appellant's check was covered by funds then on deposit in the bank and would be honored on presentation. Upon being assured that funds were on deposit sufficient to cover the check, the dealer completed the transaction.

The seller deposited the check in the bank for collection in accordance with usual banking practices, but it was returned to him by his local bank within a short time thereafter with the notation that payment thereon had been stopped by the maker. The dealer made several unsuccessful attempts to secure the money or the truck from the appellant, but no civil proceedings resulted from the transaction.

Appellant testified that he had never paid the dealer anything for the truck, that he still had it and the certificate of title in his possession. As we read the testimony, he attempted to defend the charges by offering his own testimony that the truck was defective in several respects and was not worth the price agreed upon.

Appellant offered in evidence his copies of the bank records of the New York bank upon which the check was drawn and such records established that he actually had on deposit in said bank, for a substantial period before and after the date of the check, funds sufficient to cover the face of the check which he had given in payment of the truck.

Appellant presents grounds one and three together in his argument and we will consider them jointly. Ground one contends that the evidence is insufficient to sustain the conviction and, by ground three, he contends that the trial court erred in overruling his motion for an instructed verdict.

Neither party cites or refers us to a case precisely in point upon the question now under review. Appellant's cases refer to theft by false pretext by the giving of a worthless check in payment of merchandise. E.g., Dinsmore v. State, 169 Tex. Crim. 504, 335 S.W. 2d 612 (1960). Others relate to the offense of swindling. E.g., Jones v. State, 123 Tex. Crim. 437, 59 S.W. 2d 418 (1933). None are found to be apposite.

The State's brief, although elaborate and lengthy, likewise fails to present either case or statutory authority controlling the disposition of the grounds of errow now under review.

The indictment charged theft as defined in Art. 1410, V.A.P.C., reading:

> " 'Theft' is the fraudulent taking of corporeal personal property belonging to another from his possession, or from the possession of some person holding the same for him, without his consent, with intent

to deprive the owner of the value of the same, and to appropriate it to the use or benefit of the person taking."

The charge, which followed the pattern found in 5 Branch's Ann. P.C. (2d ed. 1956) §2683.1 at 131, submitted theft by false pretext as defined in Art. 1413, V.A.P.C. The latter part of Art. 1413 reads: "[I]f the taking, though originally lawful, was obtained by any false pretext, or with any intent to deprive the owner of the value thereof, and appropriate the property to the use and benefit of the person taking, and the same is so appropriated, the offense of theft is complete."

It is now well settled that a conviction of theft by false pretext can be had upon an indictment in ordinary form charging felony theft as defined in Art. 1410, V.A.P.C. Anders v. State, 171 Tex. Crim. 344, 350 S.W. 2d 549 (1961), and authorities therein cited. And, as said in 5 Branch's, supra, §2681, p. 127:

> "The offense of theft is complete under this article [1413] when the owner of property capable of being stolen surrenders possession of it to one who had the fraudulent intent to appropriate it and did appropriate it to his own use, and the owner's consent to such fraudulent taking does not prevent the conviction of theft."

It was incumbent upon the State, to sustain a conviction of theft by false pretext, to prove beyond a reasonable doubt that appellant obtained possession of the pickup truck: (a) through some pretext; (b) that the pretext was false; (c) that there existed an intent on the part of appellant to appropriate the truck at the time he obtained possession thereof; and (d) he did so appropriate it to his own benefit. Williams v. State, 152 Tex. Crim. 233, 211 S.W. 2d 951, 952 (1948). Moreover, the State had the further burden of proving there was a reliance upon the false pretext. Womack v. State, 408 S.W. 2d 119, 121 (Tex. Cr. App. 1967). See also, Colaluca v. State, 494 S.W. 2d 885, 886 (Tex. Cr. App. 1973).

Appellant's argument that the evidence is insufficient to support the conviction is stated in this manner:

> "[T]he issue is whether the defendant promised not to stop payment on the check and such promise was a false one. We submit that no such proof beyond a reasonable doubt was presented in the instant case. There was no proof of any verbal acts on [the] part of the defendant; no proof of a promise. And if an inference is to be made that there was a promise, there is no proof that the promise was false."

Regrettably, appellant refrains from citation of authority supporting the contention so advanced.

The general rule is announced in Dixon v. State, 152 Tex. Crim. 504, 215 S.W. 2d 181, 182 (1948):

> "Verbal assertions or direct representation are not required to show a false pretense or representation. Such may be shown by the conduct and acts of the party." (citations omitted)

Accord: Westover v. State, 167 Tex. Crim. 589, 322 S.W. 2d 279, 280 (1959); Luster v. State, 172 Tex. Crim. 319, 356 S.W. 2d 934, 935 (1962); Hogan v. State, 393 S.W. 2d 898; 901 (Tex. Cr. App. 1965).

In his own testimony, appellant admitted obtaining title to and possession of the truck, his issuance of the

check is payment therefor, that he requested the drawee bank to stop payment thereon, his refusal to return the truck or to release the stop payment order on the check, his refusal to pay the face of the check in cash, his present possession of the truck, and the fact that he had not paid (in money or other thing of value) anything therefor.

We also note that although appellant testified in detail as to the transaction, at no time did he ever deny his intent to procure title and possession of the vehicle through the issuance of the check and then stopping payment thereon. Giving due consideration to all of the facts enumerated above, we find that the evidence sufficient to sustain the conviction and grounds one and three are overruled. Dixon v. State, supra, and authorities following it.

We are strengthened in this conclusion when we take into consideration the fact that appellant had acquired possession of another vehicle from another dealer through the same stratagem, a matter to which we now turn.

Appellant's second ground of error complains of the admission of evidence of a similar crime. Upon cross-examination, appellant was asked:

> "Q. Did you ever buy another vehicle from any other person and stop payment on the check that you gave in payment for it?
>
> "A. No.
>
> "Q. You may not have understood my question. I'll rephrase it. Did you buy a vehicle from Mr. Hunter in Lufkin and give him a check for the vehicle and then stop payment on that check?
>
> "A. No."

After appellant rested his case, the State called R. A. Hunter, an automobile dealer from Lufkin, and established that in April, 1971 (a year after the transaction here involved), he sold a 1972 Vega to appellant, receiving his check drawn upon a Chicago bank in the amount of $500 in part payment therefor. This check was returned shortly after it was deposited with the notation "Payment Stopped"; that he was unable to locate either appellant or the vehicle for a long time thereafter; and, when finally found, the vehicle had been wrecked and that appellant had never paid him therefor.

The State offered this testimony for the limited purpose of showing intent at the time appellant obtained possession of the truck involved in this case. The Court so advised the jury at the time of its admission and covered the matter in detail in the charge.

Appellant's objection to the receipt of the testimony was expressed in this manner: "Objection to that. It's too remote. It's irrelevant. No predicate has been laid to establish the relevancy of it."

Appellant cites only Jones v. State, as authority; but there is no volume listed for the particular "Jones" case which he has in mind and we are disposed to read the hundreds of Jones cases listed in Volume 40 of the Texas Digest table of cases which bear the same title in an effort to locate the one cited.

Our record discloses that the trial court had before him at the time the testimony was admitted the opinion in O'Brien v. State, 376 S.W. 2d 833, 836 (Tex. Crim. App. 1964). There, quoting from an earlier case, the Court said:

" 'When an extraneous crime, or other transaction, tends to show intent when intent is in issue, proof of same is admissible.' "

In 1 Branch's Ann. P.C. (2d ed. 1956), §188, p. 200, many cases are cited supporting the rule stated above. The rule so enunciated is still valid. See, e.g., Blankenship v. State, 448 S.W. 2d 476, 480 (Tex. Cr. App. 1969).

Indeed, it appears that the testimony was admissible for still another reason: it controverted the defensive theory of lack of intent which found support only in his own testimony. Cf. Frison v. State, 473 S.W. 2d 479, 483 (Tex. Cr. App. 1971). Ground two is overruled.

In his fourth ground of error, appellant contends that the trial court erred in refusing one of his requested charges, reproduced in the margin.[1] The only authority cited is Goldman v. State, 468 S.W. 2d 381 (Tex. Cr. App. 1971), enunciating the well-established rule that an accused is entitled to an affirmative instruction on every defensive issue raised by the evidence, even though such issue is raised by his testimony alone. We readily acknowledge the rule so announced, but do not find it to be applicable.

The charge found in our record, to which appellant made no objection, is substantially the same charge found

[1] "If you find that sufficient funds were in the account of the applicable Bank to pay the amount of the check tendered to Helton-Hodges Motor Company, and that the defective condition of the vehicle delivered to Defendant as consideration justified a request that payment of the check be stopped, then you must find the Defendant not guilty."

in 8 Texas Practice, Criminal Forms (Morrison and Blackwell, 7th ed.) §3559, p. 564. In Dennis v. State, 420 S.W. 2d 940, 942 (Tex. Cr. App. 1967), the Court said:

> "The charge as given in this case is substantially in the same terms as the charge which is recommended in Willson's Criminal Forms, Seventh Edition, Section 3559. Without further authority we would not be inclined to require the giving of additional charges for the jury's guidance."

See also, Colaluca v. State, supra (494 S.W. 2d at 887).

Judge Onion, speaking for the Court in Parks v. State, 437 S.W. 2d 554, 557 (Tex. Crim. App. 1969), cited two key numbers to Texas Digest, along with two cases supporting this statement:

> "Further, it is well established that special requested charges may be properly refused where the instructions given by the court are adequate and fully protect the rights of the accused."

Moreover, appellant does not refer us to any authority supporting his major premise, that an uncommunicated unilateral subjective determination by an accused as to the value of property received in exchange for a check is a defense to theft by false pretext. We find no error in the refusal of the requested charge and ground four is overruled.

The judgment in the case at bar orders confinement in the state penitentiary for not less than two nor more than six years. This appears to be an improper application of Art. 42.09, V.A.C.C.P., (the indeterminate sentence law) to the judgment rather than the sentence. The

judgment will be reformed to comply with the jury's verdict assessing a definite penalty of six years confinement in the Texas Department of Corrections. Bradley v. State, 450 S.W.2d 847, 854 (Tex. Crim. App. 1969).

As reformed, the judgment is affirmed.

Quentin Keith,
Commissioner

(Delivered January 23, 1974)

Opinion approved by the Court

A True Copy

Attest:
Glenn Haynes, Clerk
Court of Criminal Appeals of Texas
By: Tommy Ware
Deputy

TRIAL COURT NO. 11,064

Filed Feb. 25, 1974

R. J. Carey
District Clerk, Montgomery County, Texas

By Peggy Stevens Deputy

THE STATE OF TEXAS,

TO THE 9TH JUDICIAL DISTRICT COURT OF MONTGOMERY COUNTY—GREETING:

Before our COURT OF CRIMINAL APPEALS, on the 20th day of February A.D. 1974, the cause upon appeal to revise or reverse your Judgment between ELIJAH W. RATCLIFF Appellant,

No. 47,600

vs. The State of Texas, Appellee, was determined; and therein our said COURT OF CRIMINAL APPEALS made its order in these words:

> "This cause came on to be heard on the transcript of the record of the court below, and the same being inspected, because it is the opinion of this Court that there was no error in the judgment, but that there was error in pronouncing judgment upon the appellant, the judgment is reformed, "TO COMPLY WITH THE JURY'S VERDICT ASSESSING A DEFINITE PENALTY OF SIX YEARS CONFINEMENT IN THE TEXAS DEPARTMENT OF CORRECTIONS"

It is ordered, adjudged and decreed by the Court that the judgment be in all things affirmed, and that the appellant pay all costs in this behalf expended, and that this decision be certified below for observance."

LEAVE TO FILE APPELLANT'S MOTION FOR REHEARING IS DENIED

WHEREFORE, We command you to observe the order of our said COURT OF CRIMINAL APPEALS in this behalf and in all things to have it duly recognized, obeyed and executed.

WITNESS, the HON. JOHN F. ONION, JR., Presiding Judge of our said COURT OF CRIMINAL APPEALS, with the Seal thereof annexed, at the City of Austin, this 22ND day of FEBRUARY A.D. 1974

Glenn Haynes
Clerk.
Froy Bennett
Deputy Clerk.

Ent: Vol. 7, Page 492

IN THE DISTRICT COURT OF MONTGOMERY COUNTY, TEXAS

October 10, 1972

THE STATE OF TEXAS,

No. 11064

vs.

ELIJAH W. RATCLIFF

This day this cause being again called, the State appeared by her District Attorney, and the defendant Elijah W. Ratcliff was brought into open Court in person, in charge of the Sheriff, for the purpose of having the sentence of the law pronounced in accordance with the* verdict and judgment herein rendered and entered against him on a former day of this term. And thereupon the defendant Elijah W. Ratcliff was asked by the Court whether he had anything to say why said sentence should not be pronounced against him and he answered nothing in bar thereof. Whereupon the Court proceeded, in the presence of the said defendant Elijah W. Ratcliff to pronounce sentence against him as follows:

It is the order of the Court that the defendant Elijah W. Ratcliff who has been adjudged to be guilty of Theft and whose punishment has been assessed by the* verdict of the jury at confinement in the penitentiary for Six (6) years, be delivered by the Sheriff of Montgomery County, Texas, immediately to the Director of Corrections of the

---

*Insert the words applying: Verdict of the Jury or Judgment of the Court

Texas Department of Corrections, or other person legally authorized to receive such convicts, and the said Elijah W. Ratcliff shall be confined in said penitentiary for a term of not less than Two (2) years nor more than Six (6) years in accordance with the provisions of the law governing the penitentiaries and the Texas Department of Corrections. And the said Elijah W. Ratcliff is hereby remanded to jail until said Sheriff can obey the directions of this sentence.

J. S. Holleman
Judge presiding

JUDGMENT OF CONVICTION [PLEA] NOT GUILTY

BE IT REMEMBERED, That on Monday, the 17th day of July 1972, there came on and was held a regular term of the Honorable District Court of Montgomery County, Texas, at the Court House thereof, at Conroe, Texas.

Present and presiding: Hon. J. S. Holleman Judge, Criminal District Court of Montgomery County; Ellis A. Qualline, Jr., District Attorney; R. J. Gray District Clerk, and A. E. Reaves Sheriff.

THE STATE OF TEXAS

vs.

ELIJAH W. RATCLIFF

No. 11064 July 26th, 1972
Indicted for Theft

THIS DAY this cause was called for trial, and the State appeared by her District Attorney, and the Defendant Elijah W. Ratcliff appeared in person and by Counsel, and both parties announced ready for trial; and the Defendant in open Court pleaded not guilty to the charge contained in the Indictment herein; and thereupon a jury, to-wit:

Fred E. Wilson and eleven others, was duly selected, empaneled and sworn, according to law, who, having heard the indictment read, and the defendant's plea of not guilty

thereto; and having heard the evidence submitted, and having been duly charged by the Court, retired in charge of the proper officer, the Defendant being present, and in due form of law returned into open Court the following verdict, which was received by the Court, and is here now entered upon the minutes of this Court, to-wit:

"We the jury find the defendant Elijah W. Ratcliff guilty as charged.

(s) Fred E. Wilson, Foreman"

It is, therefore, considered and adjudged by the Court that the Defendant Elijah W. Ratcliff is guilty of the offense of Theft as found by the jury, and that he be punished, as has been determined, by confinement in the State penitentiary for a term of Six (6) years, and that the State of Texas do have and recover of said Defendant Elijah W. Ratcliff all costs in the prosecution expended, for which execution will issue, and that said Defendant be remanded to jail to await the further order of this Court herein.

APPENDIX B

NOTICES OF FURTHER APPELLATE PROCEEDINGS

No. 47,600

IN THE COURT OF CRIMINAL APPEALS OF TEXAS

ELIJAH W. RATCLIFF,

Appellant

vs.

Appellee

STATE OF TEXAS,

NOTICE OF REVIEW AND APPLICATION FOR STAY

To the State of Texas and the Attorney General of Texas:

Elijah W. Ratcliff, Appellant, hereinafter referred to as Petitioner, hereby gives notice to the State of Texas, Appellee, hereinafter referred to as Respondent, that he intends to seek and is seeking a review of the judgment of this Court rendered on the 23rd day of January, A.D., 1974, wherein this Court affirmed a conviction of Petitioner in the District Court of Montgomery County, Texas, and Ninth Judicial District, No. 11,064, on a charge of

theft arising out of Petitioner's refusal to pay a complainant for a 1966 Chevrolet Pick-up Truck discovered to be defective by Petitioner to delivery of it.

AUTHORITIES

This review is based on *Title 28, U.S. Code,* Sec. 2102 and 2104 *and Rules 10 and 11, Rules of the Supreme Court of the United States,* and Petitioner requests a review of the complete judgment of the Texas Court of Criminal Appeals herein as well as the judgments in the Trial Courts, No. 9432 Ninth Judicial District, Polk County, Texas; the removal proceedings in the United States District Court for the Southern District of Texas pursuant to *Title 28, U.S. Code* Sections 1443 and 1447 (d), as well as Title 42 U.S. Code Sections 1981, 1982, 1983, and 1988, and the trial and review proceedings in the District Court of Montgomery County, Texas, 2nd Ninth Judicial District, No. 11,064, from which this Appeal directly derived. This review is further based on Rules 18, 19, 21, 22, and 23 of the Rules of the Supreme Court of the United States, and miscellaneous provisions of the Uniform Commercial Code, as adopted in Texas, and the applicable unaffected previously existing commercial laws on negotiable instruments. *Article 342-712, Vernon's Annotated Texas Statutes.*

STAY APPLICATION

Petitioner further requests the Court to enter a stay order this day, forthwith, withdrawing its mandate herein and ordering the release of Petitioner from the custody of warden J. O. Walker of the Wynne Unit, Texas Depart-

ment of Corrections and other employees and agents of the State of Texas during the residency and prosecution of the aforementioned and described review before the Supreme Court of the United States.

Witness my hand this 23rd day of March, A.D., 1974.

(s) Elijah W. Ratcliff,
Petitioner

CERTIFICATE OF SERVICE

I, Elijah W. Ratcliff, Petitioner in the foregoing notice of review and Application for Stay, hereby certify that a copy of such instrument was served this day on the Attorney General of Texas by first class United States mail at Austin, Texas from Huntsville, Texas.

Dated:

Dated: March 23, 1974

(s) Elijah W. Ratcliff,
Petitioner

Appendix B

No. 47,600

IN THE COURT OF CRIMINAL APPEALS STATE OF TEXAS AUSTIN, TEXAS

ELIJAH W. RATCLIFF,

Petitioner

vs.

STATE OF TEXAS,

Respondent

SUPPLEMENT TO NOTICE OF REVIEW

To the Said Honorable Court:

Petitioner, Elijah W. Ratcliff hereby emphasizes to the Court the immediate necessity of a record of the proceedings relevant to and in the above entitled and numbered Appeal which Petitioner deserves to have reviewed by the Supreme Court of the United States as jurisdiction is provided for by Title 28, U.S. Code, Section 1257 (2) and (3).

I

That such record is relevant to the preliminary as well as substantive issues which the Court is being requested to review, and time is now a critical factor in obtaining such review.

Appendix B

II

That Petitioner hereby reiterates his request that he be forthwith notified of any amount or amounts due or payable prerequisite to obtaining the relevant record whether attributable to past services or future expenses.

Witness my hand this 9th day of April, A.D., 1974.

(s) Elijah W. Ratcliff
Elijah W. Ratcliff,
Petitioner, Pro Se

CERTIFICATE OF SERVICE

I, Elijah W. Ratcliff, do certify that a copy of the foregoing Supplement to Notice of Review was served this day by first class United States mail on the clerk of the Supreme Court of the United States in Washington, D.C. and the Attorney General of Texas at Austin, Texas.

Dated: April 9, 1974

(s) Elijah W. Ratcliff
Elijah W. Ratcliff,
Petitioner, Pro Se

Appendix B

No.

IN THE SUPREME COURT OF THE UNITED STATES

ELIJAH W. RATCLIFF,

Appellant

vs.

STATE OF TEXAS,

Appellee,

NOTICE OF APPEAL

To: Glenn Haynes, Clerk, Court of Criminal Appeals of Texas: Howard Jones, Clerk, Ninth Judicial District, Polk County, Texas: And R. J. Gray, Clerk, 2nd Ninth Judicial District, Montgomery County, Texas.

Whereas Appellant submitted notice of his intention to seek a review of a criminal case to the clerk of the Court of Criminal Appeals of Texas in No. 47,600 from Montgomery County, Texas, No. 11,064, and Polk County, Texas, No. 9432, and notification of Certification of the record had not been received by him, notice is hereby given to the Courts which may presently possess such records of his intitation of an appeal from the judgment and denial of rehearing in No. 47,000 before the Court of Criminal Appeals of Texas originally rendered on the 23rd day of January, A.D., 1974.

JURISDICTION of this Appeal is by virtue of Title 28 U.S.C. 1257, and the Eighth, and Fourteen Amend-

Appendix B

ments to the *United States Constitution, U.S.C., Const., Amend., 8, 14,* and the procedures set forth by *Title 28, U.S.C.,* 2101, 2102, 2104, and 2105.

Jurisdiction is further supported by the Civil Rights Act, as amended, as more fully appears in the jurisdictional statement and application for Extra ordinary Writs previously submitted herein. *Title 28, U.S.C.,* 1447 (d); *Title* 42 *U.S.C.,* 1981, 1982, and 1983.

The Record requested to be certified for filing herein by the Clerk of the Court which presently possess it, fully or *partically,* consistent with *Rule 12, Rules of the Supreme Court of the United States, is as follows:*

1. The complete record as presented to the Court of Criminal Appeals in No. 47,600.

2. Specific request is made of the Clerk of the District Court of Montgomery County, Texas for the Motion To Dismiss, Motion for Change of Venue with affidavits, the verbatim transcription of an testimony and evidence recorded before the Court, including all objections of Appellant in Chambers as well as in open court and all exhibits of evidence and bills presented by Appellant before the trial court; including his tax records for auto expenditures.

3. Specific request is made of the Clerk of the District Court of Polk County, Texas for the Petition for Removal with attachments, memorandum in support jurisdiction, interrogatories served on agents of the State of Texas, Order remanding in No. 71-H-228 in the U. S. District Court at Houston, Texas, Motion To Dismiss, and the motion for Change of Venue with Affidavits, each submitted

before the Trial and transfer of the proceedings in No. 9432, Ninth Judicial District, Polk County, Texas, to Montgomery County, Texas.

4. Specific request is also made of the District Clerk, Montgomery County, Texas for motions and authorities submitted following the trial at the stage for motions for new trial and in arrest of judgment as well as any authorities presented preliminary to the Appeal to the Court of Criminal Appeals at Austin, Texas.

Witness my hand this 6th day of May, A.D., 1974 to the foregoing notice of Appeal, copies of which were served this day on each of the Clerks referred to herein and the Attorney General of Texas by first class United States mail.

(s) Elijah W. Ratcliff
Elijah W. Ratcliff,
Appellant, Pro Se

Sworn to and Subscribed Before Me this 6th day of May, A.D., 1974

(s)
Notary Public
Walker County, Texas

APPENDIX C

TEXT OF AUTHORITIES INVOLVED OR RELIED ON

Vernon's Ann. Civ. Art. St. 275

The judges and clerks of the district and County Courts and Justices of the Peace may issue writs of original attachment, returnable to their respective courts, upon the Plaintiff, his agent or attorney making an affidavit stating:

that the defendant is justly indebted to the Plaintiff, and the amount of the defendant, and

that the debt is due for property obtained under false pretenses. *Acts* 1864, *Page* 37; *G. L. vol,* 5, p. 691.

Vernon's Ann. Civ. St. Art 3737 (e)

Section 1. A memorandum or record as an act, event or condition shall, insofar as relevant, be competent evidence of the occurence of the act or event or the existence of the condition if the judge finds that:

a. It was made in the regular course of business;

b. It was the regular course of that business for an employee or representative of such business with personal knowledge of such act, event, or condition to make such memorandum or record or to transmit information there of to be included in such memorandum or record:

c. That it was made at or near the time of the act, event or condition or reasonably soon thereafter. Sec. 4. "Business as used in this act includes any and every kind of regular organized activity whether conducted for profit, or not. Acts. 1951, 52nd Leg., p. 345, Ch. 321."

Vernon's Ann. Civ. St. Art. 4076

The clerks of the district and county courts and justices of the peace may issue writs of garnishment, returnable to their respective courts, in the following cases:

1. Where an original attachment has been issued.

2. Where the Plaintiff sues for a debt and makes affidavit that such debt is just, due, unpaid, and that the defendant has not within his knowledge property in his possession within this state, subject to execution, sufficient to satisfy such debt; and that the garnishment applied for is not sued or out to injure the defendant or the garnishee.

3. Where the Plaintiff has a valid, subsisting judgment and makes affidavit that the defendant has not, within his knowledge, property in his possession within this State, subject to execution, sufficient to satisfy such judgment. Acts 1874, P. 113; P.D. 157-3785; G. L. Vol. 8, P. 115.

Vernon's Ann. Civ. St. Art. 6840

Judges and Clerks of the district and county courts, and justices of the peace shall, at the commencement or during the progress of any civil suit, before final judgment,

have power to issue writs of sequestration, returnable to their respective courts; in the following cases:

When a person sues for title or possession of any personal property or any person in possession there of, will injure, ill-treat, waste or destroy such property, or remove the same out of the limits of the county during the pendency of the suit.

When a person sues for foreclosure of a mortgage or the enforcement of lien upon personal property or of any description; and makes oath that he fears that the defendant or person in possession there of will justly injure, ill-treat, waste or destroy, or remove the same out of the county during the pendency of the suit.

When any person sues for the title or possession of any property from which he has been ejected by force or violence, and makes *oath* of such fact.

Acts 1866, P. 120; Acts 1887, P. 30 G. L. Vol. 5, Page 1038; Vol. 9, P. 828.

CERTIFICATE OF SERVICE

I, Elijah W. Ratcliff, Petitioner, Pro Se, in the foregoing Motion for Leave to File Petition for Writ of Mandamus and Petition for Writ of Mandamus, certify that a copy of the described instrument was served this 12th day of April, A.D., 1977, on Respondent at 515 Rusk Avenue, Houston, Texas 77002, and on the Attorney of Record for the Respondent in the primary habeas corpus action before Respondent addressed to the Honorable Alvin K. James, Assistant Attorney General of Texas, 723 Main Street, Houston, Texas 77002, by first class United States Mail with postage prepaid and deposited personally in the United States Mail.

Winess my hand this 12th day of April, A.D., 1977.

Elijah W. Ratcliff

Petitioner, Pro Se